Office-Supreme Court, U.S.
FILED
APR 27 1966
JOHN F. DAVIS, CLERK

NO. 1257, OCTOBER TERM, 1965

IN THE

Supreme Court of the United States

JOHN ALBERT COOK, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIAM F. WALSH
1955 Richmond Ave.
Houston, Texas 77006
JAckson 9-3134

Counsel for Petitioner

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented: Whether a federal criminal conviction can stand when the trial court does not instruct the jury as to the elements of the offense charged, but instead reads to the jury a statute embracing nearly half a million different offenses?	2
Constitutional Provision Involved	2
Statement	2
Reasons For Granting The Writ	3
Conclusion	6
Certificate of Service	7
Appendix "A"	9
Appendix "B"	11
Appendix "C"	12

INDEX OF AUTHORITIES

CASES	Page
Bollenbach v. United States, 326 U.S. 607, 613	5
Byrd v. United States, 342 F.2d 939, 940 (D.C. 1965)	3
Campbell v. United States, 167 F.2d 451, 453	5
Christoffel v. United States, 338 U.S. 84, 90	5
Lott v. United States, 218 F.2d 675, 680-681 (Footnote 7)	6
Merrill v. United States, 338 F.2d 763, 767	6
Morris v. United States, 156 F.2d 525, 531	4

CASES	Page
Peterson v. United States, 344 F.2d 419, 428	6
Samuel v. United States, 169 F.2d 787, 792 (C.A. 9)	6
Screws v. United States, 325 U.S. 91, 107	3, 6
Terminiello v. Chicago, 337 U.S. 1, 5	6
United Brotherhood v. United States, 330 U.S. 395, 411-412	6
United States v. Harris, 346 F.2d 182, 184 (C.A. 4, 1965)	3
United States v. Hutchison, 338 F.2d 991 (C.A.4, 1964)	3
United States v. Massiah, 307 F.2d 62, 71 (C.A.2, 1962)	3
Williamson v. United States, 332 F.2d 123, 133-134 (1964)	5
Rule 52(b), Federal Rules of Criminal Procedure	4

NO._____, OCTOBER TERM, 1965

IN THE

Supreme Court of the United States

JOHN ALBERT COOK, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

John Albert Cook prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit affirming his conviction of a three-count indictment (R. 3-5) accusing Petitioner of conscious and unlawful possession of a stolen Treasurer's check, in violation of Section 1708, Title 18, *United States Code* (Count One), forging a signature on the same check, in violation of Section 495, Title 18, *United States Code* (Count Two), and uttering the same check, in violation of Section 495, Title 18, *United States Code* (Count Three).

OPINION BELOW

The District Court for the Southern District of Texas did not render an opinion. The Opinion of the Court of Appeals is reported at 356 F.2d 918, and is reproduced as Appendix "A" to this Petition.

JURISDICTION

Judgment of the Court of Appeals (Appendix "B") was entered on February 18, 1966 (R. 283), and a timely petition for rehearing (R. 284) was denied (Appendix "C") on March 30, 1966 (R. 292). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether a federal criminal conviction can stand when the trial court does not instruct the jury as to the elements of the offense charged, but instead reads to the jury a statute embracing nearly half a million different offenses?

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

STATEMENT

Viewing the evidence in the light most favorable to the prosecution, this was the government's case:

Richard A. Newsome heard his mailbox opened, went to the door, and found Cook on his front porch (R. 40). Petitioner came into Mrs. D. A. Conner's liquor store and cashed a government check payable to Richard A. New-

some. When she followed him from the store, Petitioner fled (R. 70-73). A government expert on questioned documents testified that Cook's handwriting corresponded to the signature on the questioned check (R. 138).

Petitioner took the stand to deny and contradict prosecution testimony and asserted his innocence (R. 159-173).

After some period of deliberation, the jurors asked the Court to explain whether Count One charged that Appellant stole the check in question "or that he only had it in his possession" (R. 256). The judge explained that "the count does not charge the defendant, as such, with having stolen the check", but "charges him with receiving, concealing and unlawfully having in his possession the check . . ." The judge's answer to the jury's question is printed in full at pages 256 and 258 and includes the statement that "I did not mean to infer that it is your duty to find one way or the other whether he knew that it had either been stolen, taken or abstracted" (R. 258).

REASONS FOR GRANTING THE WRIT

A writ of certiorari should be granted in this case because the Opinion of the Court of Appeals (Appendix "A") not only conflicts with this Court's requirement that the instructions to the jury in a criminal case must identify "the essential ingredients of the only offense on which the conviction could rest" (*Screws v. United States*, 325 U.S. 91, 107), but also because the Fifth Circuit's Opinion is in direct conflict with the following Opinions from other Circuits:

United States v. Massiah, 307 F.2d 62, 71 (C.A.2, 1962).
United States v. Hutchison, 338 F.2d 991 (C.A.4, 1964).
United States v. Harris, 346 F.2d 182, 184 (C.A.4, 1965).
Byrd v. United States, 342 F.2d 939, 940 (D.C., 1965).